

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
ALEXANDRIA DIVISION

ANDREW L. CIBULA, *et al.*

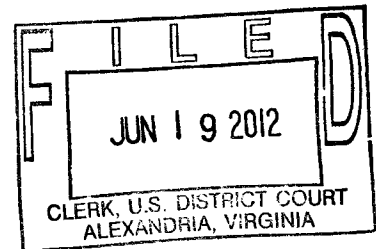
*Plaintiffs,*

v.

UNITED STATES OF AMERICA,

*Defendant.*

No. 1:05-CV-01386



CONSENT ORDER

Upon remand from the United States Court of Appeals for the Fourth Circuit, pursuant to *Cibula v. United States*, 664 F.3d 428 (4th Cir. 2012), and having considered the submissions of the parties and the entire record, it is ORDERED that the parties' Proposed Consent Order is hereby entered.

It is FURTHER ORDERED in accordance with the JUDGMENT, dated March 27, 2007, that the total amount remaining to be disbursed is \$25,184,489, which consists of the present value sum \$22,823,718 for future care needs (of which \$1,687,500 shall be classified and paid as "the future care payments for years 2007 through 2011") and the present value sum of \$2,360,771 for lost future earnings.

It is FURTHER ORDERED that SunTrust Bank is hereby appointed Trustee of the "J.C. Reversionary Trust."

It is FURTHER ORDERED that within 90 days of this Order, the United States shall deposit into the IOLTA Trust Account of Klores, Perry, Mitchell, P.C., the total sum of \$25,184,489 to be paid by Klores, Perry, Mitchell, P.C., as follows:

1. To Captain Andrew Cibula and Mrs. Jennifer Cibula, the Co-Trustees of the Cibula

Family Trust, the sum of \$1,770,579, which represents the net of the award for the lost future earnings after deducting 25% attorneys' fees.

2. To SunTrust Bank, the Court-Appointed Trustee of the "J.C. Reversionary Trust," the sum of \$15,430,289, which represents the net of the award for future care needs after deducting 25% attorneys' fees and the future care payments for years 2007 through 2011.

3. To Captain Andrew Cibula and Mrs. Jennifer Cibula, Co-Trustees of the Cibula Family Trust, the sum of \$1,687,500, which represents the net of the future care payments for years 2007 through 2011.

4. To Klores, Perry, Mitchell, P.C., the sum of \$6,296,122, which represents attorneys' fees of 25% of the awards for future care needs and lost future earnings.

It is FURTHER ORDERED that SunTrust Bank, the Court-Appointed Trustee of the "J.C. Reversionary Trust," shall deposit the sum of \$15,430,289 received by Klores, Perry, Mitchell, P.C., in a separate segregated account for the sole and exclusive purpose of making the payments authorized by this Order. SunTrust Bank, the Court-Appointed Trustee of the "J.C. Reversionary Trust," shall not co-mingle the \$15,430,289, and any interest or dividends thereon, with any other funds or assets, including any other funds or assets of Plaintiff J.C.

It is FURTHER ORDERED that SunTrust Bank, the Court-Appointed Trustee of the "J.C. Reversionary Trust," shall make the payments specified in the schedule of future annual payments (hereinafter "Schedule") appended hereto as Appendix A on the dates, and in the amounts, stated in said Schedule.

It is FURTHER ORDERED that said Schedule is fixed and unmodifiable and that SunTrust Bank, the Court-Appointed Trustee of the "J.C. Reversionary Trust," shall have no power or authority to deviate from the dates and amounts stated in said Schedule.

It is FURTHER ORDERED that SunTrust Bank, the Court-Appointed Trustee of the "J.C. Reversionary Trust," shall make no payments from the "J.C. Reversionary Trust" except (1) those payments specified in said Schedule on the dates and in the amounts stated therein, regardless of Plaintiff J.C.'s medical or other needs, and (2) its trustee fees. SunTrust Bank shall be entitled to receive said fees based on the trust corpus in accordance with its published fee schedule in effect when services are rendered, the current published Schedule of Annual Fees is appended hereto as Appendix B.

It is FURTHER ORDERED that SunTrust Bank, the Court-Appointed Trustee of the "J.C. Reversionary Trust," shall pay said future annual payments until the date of Plaintiff J.C.'s death, the final payment stated in the Schedule at the expiration of 64.8 years, or the depletion of the trust corpus, whichever occurs first. Said future annual payments shall be made payable to Plaintiff J.C.'s parents in the absence of a court order to the contrary.

It is FURTHER ORDERED that SunTrust Bank, the Court-Appointed Trustee of the "J.C. Reversionary Trust," shall provide the United States of America with written notice at time each future annual payment is made providing the date and amount of each such payment and a periodic statement of account activities on a minimum of an annual basis. The notice and periodic statement of account to be provided to the United States shall be mailed to the following address, or upon written notice, any subsequent change of address: Director, Torts Branch (FTCA Staff), Civil Division, United States Department of Justice, P.O. Box 888, Benjamin Franklin Station, Washington, D.C. 20044.

It is FURTHER ORDERED that upon the death of Plaintiff J.C., upon the final payment stated in the Schedule, or the depletion of the trust corpus, whichever occurs first, SunTrust Bank, the Court-Appointed Trustee of the "J.C. Reversionary Trust," shall cease making the

periodic payments.

It is FURTHER ORDERED that, in the event funds remain in the trust corpus at the death of Plaintiff J.C. or upon the final payment stated in the Schedule, whichever occurs first, SunTrust Bank, the Court-Appointed Trustee, of the "J.C. Reversionary Trust" shall pay the entire balance of the trust corpus to the United States of America. The payment shall be made payable to the United States Treasury, fbo Andrew L. Cibula, et al., and mailed to the following address, or upon written notice, any subsequent change of address: Director, Torts Branch (FTCA Staff), Civil Division, United States Department of Justice, P.O. Box 888, Benjamin Franklin Station, Washington, D.C. 20044.

It is FURTHER ORDERED that SunTrust Bank, the Court-Appointed Trustee of the "J.C. Reversionary Trust," shall make no payments from the "J.C. Reversionary Trust" except those expressly Ordered above.

It is FURTHER ORDERED that, upon the death of Plaintiff J.C., the Plaintiffs, including the heirs and beneficiaries of Plaintiff J.C.'s estate, shall provide to the Clerk of this Court, the Court-Appointed Trustee of the "J.C. Reversionary Trust," and the United States a certified death certificate within ten (10) days of the date of Plaintiff J.C.'s death. The certified death certificate shall be mailed to the United States at the following address, or upon written notice, any subsequent change of address: Director, Torts Branch (FTCA Staff), Civil Division, United States Department of Justice, P.O. Box 888, Benjamin Franklin Station, Washington, D.C. 20044.


It is FURTHER ORDERED that the net sum previously paid by the United States to the Plaintiffs in satisfaction of J.C.'s pain and suffering award (\$187,500) currently held in the escrow account of Plaintiffs' counsel may be paid to the Cibula Family Trust.

08-18-'12 14:25 FROM- Thompson Wildhack

703-297-0082


T- J P0001/0001 F-191

WE ASK FOR THIS:


  
ANDREW E. CIBULA, Plaintiff

  
JENNIFER L. CIBULA, Plaintiff

  
BRUCE J. KLORES, Esq.  
THOMAS W. MITCHELL, Esq.  
Attorneys for Plaintiffs

  
KELLY THOMPSON, Esq.  
Court-Appointed Guardian Ad Litem for J.C.

SunTrust Bank  
Court-Appointed Trustee

By: \_\_\_\_\_  
[TITLE OF CORPORATE OFFICER]  
  
R. JOSEPH SHER, Esq.  
BRIDGET BAILEY LIPSCOMB, Esq.  
Attorneys for the United States of America

SO ORDERED:

Dated: June 19, 2012

/s/  
Gerald Bruce Lee  
United States District Judge  
HONORABLE GERALD BRUCE LEE  
United States District Judge

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WE ASK FOR THIS:

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ANDREW L. CIBULA, Plaintiff

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JENNIFER L. CIBULA, Plaintiff

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BRUCE J. KLORES, Esq.  
THOMAS W. MITCHELL, Esq.  
Attorneys for Plaintiffs

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KELLY THOMPSON, Esq.  
Court-Appointed Guardian Ad Litem for J.C.

SunTrust Bank  
Court-Appointed Trustee

By: David W. Keister, Senior Vice President  
[TITLE OF CORPORATE OFFICER] David W. Keister

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R. JOSEPH SHER, Esq.  
BRIDGET BAILEY LIPSCOMB, Esq.  
Attorneys for the United States of America

SO ORDERED:

Dated: \_\_\_\_\_

\_\_\_\_\_  
HONORABLE GERALD BRUCE LEE  
United States District Judge

# APPENDIX A

Present Value Calculation						
Analysis Date		Revised				
		12-Jun-12				
Discount Rate		4.250%				
Present Value Date:		27-Mar-07				
Present Value Target:		\$ 17,117,789				
Up Front Payment		\$ 1,687,500				
PV of Up Front Payment		\$ 1,345,674				
Revised Target Payment PV		\$ 15,772,115				
Revised Payment PV:		\$ 17,117,789				
Payment Schedule						
Payment Number	Payment Date	Payment	Days	Exponent		PV
0	27-Mar-07	\$ -	-	-		\$ -
1	1-Nov-07	\$ -	219	0.60		\$ -
2	1-Nov-08	\$ -	585	1.60		\$ -
3	1-Nov-09	\$ -	950	2.60		\$ -
4	1-Nov-10	\$ -	1,315	3.60		\$ -
5	1-Sep-12	\$ 1,687,500	1,985	5.44		\$ 1,345,674
6	1-Nov-12	\$ 156,805	2,046	5.61		\$ 124,176
7	1-Nov-13	\$ 199,089	2,411	6.61		\$ 151,233
8	1-Nov-14	\$ 155,413	2,776	7.61		\$ 113,243
9	1-Nov-15	\$ 372,865	3,141	8.61		\$ 260,614
10	1-Nov-16	\$ 407,531	3,507	9.61		\$ 273,200
11	1-Nov-17	\$ 416,291	3,872	10.61		\$ 267,696
12	1-Nov-18	\$ 427,103	4,237	11.61		\$ 263,452
13	1-Nov-19	\$ 443,637	4,602	12.61		\$ 262,495
14	1-Nov-20	\$ 483,485	4,968	13.61		\$ 274,379
15	1-Nov-21	\$ 491,988	5,333	14.61		\$ 267,822
16	1-Nov-22	\$ 507,653	5,698	15.61		\$ 265,083
17	1-Nov-23	\$ 528,262	6,063	16.61		\$ 264,599
18	1-Nov-24	\$ 554,424	6,429	17.61		\$ 266,352
19	1-Nov-25	\$ 576,239	6,794	18.61		\$ 265,546
20	1-Nov-26	\$ 614,176	7,159	19.61		\$ 271,481
21	1-Nov-27	\$ 650,126	7,524	20.61		\$ 275,066
22	1-Nov-28	\$ 660,274	7,890	21.62		\$ 268,525
23	1-Nov-29	\$ 686,545	8,255	22.62		\$ 267,826
24	1-Nov-30	\$ 720,313	8,620	23.62		\$ 269,544
25	1-Nov-31	\$ 759,862	8,985	24.62		\$ 272,751
26	1-Nov-32	\$ 785,861	9,351	25.62		\$ 270,553
27	1-Nov-33	\$ 817,720	9,716	26.62		\$ 270,044
28	1-Nov-34	\$ 883,847	10,081	27.62		\$ 279,983
29	1-Nov-35	\$ 892,148	10,446	28.62		\$ 271,091
30	1-Nov-36	\$ 949,039	10,812	29.62		\$ 276,590
31	1-Nov-37	\$ 973,411	11,177	30.62		\$ 272,127
32	1-Nov-38	\$ 1,022,401	11,542	31.62		\$ 274,171
33	1-Nov-39	\$ 1,063,132	11,907	32.62		\$ 273,471
34	1-Nov-40	\$ 1,115,358	12,273	33.62		\$ 275,127
35	1-Nov-41	\$ 1,205,020	12,638	34.62		\$ 285,178
36	1-Nov-42	\$ 1,217,276	13,003	35.62		\$ 276,335
37	1-Nov-43	\$ 1,266,560	13,368	36.62		\$ 275,801
38	1-Nov-44	\$ 1,329,484	13,734	37.62		\$ 277,669
39	1-Nov-45	\$ 1,382,069	14,099	38.62		\$ 276,881
40	1-Nov-46	\$ 1,467,706	14,464	39.62		\$ 282,054
41	1-Nov-47	\$ 1,508,192	14,829	40.62		\$ 278,018
42	1-Nov-48	\$ 1,620,184	15,195	41.62		\$ 286,454
43	1-Nov-49	\$ 1,647,241	15,560	42.62		\$ 279,365
44	1-Nov-50	\$ 1,728,661	15,925	43.62		\$ 281,222
45	1-Nov-51	\$ 1,817,276	16,290	44.62		\$ 283,585
46	1-Nov-52	\$ 1,886,557	16,656	45.62		\$ 282,363
47	1-Nov-53	\$ 1,962,867	17,021	46.62		\$ 281,807
48	1-Nov-54	\$ 2,060,514	17,386	47.62		\$ 283,766
49	1-Nov-55	\$ 2,185,122	17,751	48.62		\$ 288,659
50	1-Nov-56	\$ 2,271,573	18,117	49.62		\$ 287,813
51	1-Nov-57	\$ 2,338,007	18,482	50.62		\$ 284,154
52	1-Nov-58	\$ 2,455,586	18,847	51.62		\$ 286,177
53	1-Nov-59	\$ 2,553,629	19,212	52.62		\$ 285,570
54	1-Nov-60	\$ 2,680,104	19,578	53.62		\$ 287,463
55	1-Nov-61	\$ 2,813,553	19,943	54.62		\$ 289,473
56	1-Nov-62	\$ 2,976,325	20,308	55.62		\$ 293,736
57	1-Nov-63	\$ 3,043,531	20,673	56.62		\$ 288,124
58	1-Nov-64	\$ 3,195,116	21,039	57.62		\$ 290,110
59	1-Nov-65	\$ 3,322,015	21,404	58.62		\$ 289,335
60	1-Nov-66	\$ 3,518,135	21,769	59.62		\$ 293,925
61	1-Nov-67	\$ 3,626,136	22,134	60.62		\$ 290,597
62	1-Nov-68	\$ 3,808,449	22,500	61.62		\$ 292,732
63	1-Nov-69	\$ 4,021,333	22,865	62.62		\$ 296,484
64	1-Nov-70	\$ 1,247,131	23,230	63.62		\$ 88,203
					Total	17,117,789

## APPENDIX B



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